

EXHIBIT 5

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
RS FIT NW LLC,) Case No. 20-11568 (TMH)
Debtor.)
-----)
24 HOUR FITNESS WORLDWIDE,)
INC.,)
Plaintiff,)
)
-VS-) Adv Pro. No. 20-51051 (TMH)
)
CONTINENTAL CASUALTY COMPANY;)
ENDURANCE AMERICAN SPECIALTY)
INSURANCE COMPANY; STARR)
SURPLUS LINES INSURANCE)
COMPANY, ALLIANZ GLOBAL RISKS)
US INSURANCE COMPANY; LIBERTY)
MUTUAL INSURANCE COMPANY;)
BEAZLEY-LLOYD'S SYNDICATES)
2623/623; ALLIED WORLD)
NATIONAL ASSURANCE COMPANY;)
QBE SPECIALTY INSURANCE)
COMPANY; and GENERAL SECURITY)
INDEMNITY COMPANY OF ARIZONA,)
Defendants.)

Videotaped deposition of MERCEDES CARTHENON,
PH.D. taken before CAROL CONNOLLY, CSR, CRR, and Notary
Public, pursuant to the Federal Rules of Civil Procedure
for the United States District Courts pertaining to the
taking of depositions, at 10 S. Wacker Drive, Chicago,
Illinois, commencing at 10:02 a.m. on the 16th day of
August, A.D., 2023.
Job No. CS6059198

1 There were present at the taking of this
2 deposition the following counsel:

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18 Continental Casualty Company;

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1
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18
19 ALSO PRESENT:

20 Mr. Milo Savich, Videographer
21
22
23
24

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I N D E X
VIDEOTAPED DEPOSITION OF MERCEDES CARTHENON, Ph.D.
TAKEN August 16, 2023

EXAMINATION BY	PAGE
Mr. Ingerman	7
Mr. O'Carroll	90

- - - - -
EXHIBITS MARKED

	PAGE
Exhibit 1	9
Plaintiff's Expert Disclosure Pursuant to Federal Rule of Civil Procedure 26(a)(2)	
Exhibit 2	20
Washington Post Article, As the BA.5 variant spreads, the risk of coronavirus reinfection grows, By Joel Achenbach	
Exhibit 3	24
August 18, 2021 letter from David E. Weiss to Mercedes Carthenon and attachment	
Exhibit 4	45
Annals of Internal Medicine, Transmission of SARS-CoV-2: A Review of Viral, Host, and Environmental Factors, by Eric A. Meyerowitz, M.D., et al.	

1	Exhibit 5	Article: Occurrence and	49
2		transmission potential	
3		of asymptomatic and	
4		presymptomatic SARs-CoV-2	
5		infections: A living	
6		systematic review and	
7		meta-analysis by Diana	
8		Buitrago-Garcia, et al.	
9	Exhibit 6	McLarens report,	74
10		May 15, 2020	
11	Exhibit 7	November 23, 2022 letter	81
12		from Allison Stock, Ph.D.	
13		to Mr. Ingerman, et al.,	
14		etc.	
15	Exhibit 8	Expert report of	84
16		Dr. Alexis Sauer-Budge	
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1 epidemiologist to comment on the course of the pandemic,
2 what we knew when, and a bit about how the virus itself
3 was spread in the population. And I was told that I
4 would be asked questions about -- that would rely on my
5 expertise as an epidemiologist.

6 Q And you've never served as an expert witness
7 before, right?

8 A No, I have never served as an expert witness.

9 Q Were you asked as part of your assignment to
10 determine whether COVID-19 was actually present at any
11 particular 24 Hour Fitness location?

12 A No, I was not ever asked to determine whether
13 COVID-19 was actually present.

14 Q Were you ever asked to determine as part of
15 your assignment whether or not COVID was actually
16 spreading at any particular 24 Hour Fitness location?

17 MR. CARROLL: Objection to form.

18 THE WITNESS: I was not asked to assess whether or
19 not COVID-19 was actually spreading.

20 MR. INGERMAN: Q Okay. Let's mark this as No. 3.

21 (Exhibit 3 marked as requested)

22 Q All right. Dr. Carthenon, we've handed what we
23 marked as Carthenon Deposition 3. This is a letter from
24 David Weiss at Reed Smith to you dated August 18th, 2021.

1 Fitness shared with me, and what I did was I used these
2 criteria to make an indeterminate determination about
3 whether or not I thought their assumption of the presence
4 was reasonable. And the reason that I think their
5 assumption that it was present is reasonable is -- based
6 on consistency, analogy, and biological plausibility.

7 MR. INGERMAN: Q Okay. Let me make sure I
8 understand this. Do you have an opinion one way or the
9 other as to whether COVID-19 was present at any location
10 -- at any 24 Hour Fitness location?

11 MR. CARROLL: Objection to form.

12 THE WITNESS: No, I do not have an opinion.

13 MR. INGERMAN: Q Do you have an opinion one way or
14 the other whether COVID-19 was spreading at any 24 Hour
15 Fitness location?

16 MR. CARROLL: Objection to form.

17 THE WITNESS: I do not have an opinion about whether
18 it was spreading.

19 MR. INGERMAN: Q Okay. All right. Are you aware
20 of any other epidemiological study that used the Bradford
21 Hill criteria to determine the presence of SARS Co-V 2 at
22 any particular location?

23 A I -- I am not aware. Quite frequently when we
24 publish in the scientific literature, part of the paper

1 T. Connor O'Carroll, Esq.

2 cocarroll@reedsmith.com

3 August 30, 2023

4 RE: 24 Hour Fitness Worldwide, Inc v. Continental Casualty
5 8/16/2023, Mercedes R. Carnethon , PhD (#6059198)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com

16
17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

24 Hour Fitness Worldwide, Inc v. Continental Casualty Company
 Mercedes R. Carnethon , PhD (#6059198)

E R R A T A S H E E T

PAGE passim LINE passim CHANGE Dr. Carnethon's name
is misspelled throughout the transcript as "Carthenon." This
misspelling should be corrected as the witnesses name is
"Mercedes R. Carnethon"

REASON _____

PAGE 31 LINE 10-14 CHANGE The name "Matt Larson"
should be changed to "Dan Larson."

REASON correction of name

PAGE 31 LINE 1-2 CHANGE "Mike Leer or Shear" should
be changed to "Matt Piro and Dan Larson"

REASON correction of names

PAGE _____ LINE _____ CHANGE _____

REASON _____

PAGE _____ LINE _____ CHANGE _____

REASON PAGE _____ LINE _____ CHANGE _____

Mercedes R. Carnethon , PhD Date _____

REASON _____

24 Hour Fitness Worldwide, Inc v. Continental Casualty Company
Mercedes R. Carnethon , PhD (#6059198)

ACKNOWLEDGEMENT OF DEPONENT

I, Mercedes R. Carnethon , PhD, do hereby declare that I
have read the foregoing transcript, I have made any
corrections, additions, or changes I deemed necessary as
noted above to be appended hereto, and that the same is
a true, correct and complete transcript of the testimony
given by me.



09-29-2023

Mercedes R. Carnethon , PhD

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

____ DAY OF _____, 20____.

NOTARY PUBLIC